

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
El Dorado 900, LLC) File Number: EB-02-LA-117
) NAL/Acct. No. 200232900004
Antenna Structure Registration Number 1041257) FRN 0006-7923-03
City of Industry, California)
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 28, 2002

By the District Director, Los Angeles Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that El Dorado 900, LLC, ("El Dorado") the owner of Antenna Structure Registration # 1041257, in City of Industry, California has apparently willfully violated Section 303(q) of the Communications Act of 1934, as amended ("Act"),¹ and Sections 17.23, 17.47(a), 17.48(a), 17.56 and 17.57 of the Commission's Rules² by: (1) not maintaining required lighting on the antenna structure; (2) not making an observation of the antenna structures' lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights; (3) failing to notify the FAA of any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes; (4) not replacing or repairing lights as soon as practicable; and (5) by failing to properly notify the FCC of a change in ownership of the antenna structure. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ that El Dorado is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On March 14, 2002, the Los Angeles Office received a referral from the FCC's Consumer

¹ 47 U.S.C. § 303(q) (Antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission).

² 47 C.F.R. §§ 17.23, 17.47(a), 17.48(a), 17.56 and 17.57.

³ 47 U.S.C. § 503(b).

Center regarding a complaint that all of the lights on Antenna Structure Registration (ASR) number 1041257 had been out for over a month. The complaint indicated that the structure was located near Workman High School in the City of Industry, California and that planes and police helicopters frequently use the air space in the vicinity of the tower.

3. According to FCC databases, ASR 1041257 is owned by Robert Burdette and Associates, Inc., and must comply with painting and red obstruction lighting specifications contained in Chapters 3, 4, 5 and 13 of FAA Circular Number 70/7460-1J. The structure is 75.3 meters above ground level, is located approximately six miles from an airstrip, and serves as the N#1 antenna structure in a 2-tower AM array for station KALI.

4. An Agent in the Los Angeles Field Office attempted to contact the registered tower owner but was unable to do so because the telephone number had been disconnected and was no longer in service. The Agent then reported the light outage complaint directly to Multicultural Radio Broadcasting, Inc., licensee of station KALI-AM.

5. On the evening of March 14, 2002, Agents from the Los Angeles Office conducted a visual inspection of the antenna structure and confirmed that ASR # 1041257 was completely dark. Specifically, the top mounted flashing red obstruction beacon and the side mounted steady burning red lights were out. The Agents reported the light outages to the FAA's Riverside Flight Service Station and a 15-day NOTAM was issued. Personnel at the Riverside Flight Service Station stated that there had been no other light outage report made for ASR 1041257.

6. Subsequent investigation revealed that on or about February 8, 1999, Robert Burdette and Associates, Inc., had transferred ownership of the antenna structure to El Dorado 900, LLC. FCC records do not reflect any notification of change in ownership for ASR 1041257.

7. Further investigation and inspections by a Los Angeles Agent on March 19 and March 20, 2002, revealed that an automated log was generated at the transmitter site on a daily basis, but no automated alarm system was installed for monitoring the tower lights. The automated log reflected a continuous light outage beginning on December 28, 2001 and remaining out on each consecutive day through March 14, 2002, the last date reflected on the log. An employee of El Dorado, who also was employed by the licensee of KALI, stated he periodically retrieved the automated station log report generated at the transmitter site, and sent it via fax to the station's chief operator. The El Dorado employee confirmed that the light indication reading on the automated station log report reflected a tower light outage on the N#1 antenna structure.

8. On April 16, 2002, the El Dorado employee notified the FCC that the lights had been repaired on April 11, 2002. No explanation was provided for why repair of the lights took a month.

III. DISCUSSION

9. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean

simply that the acts or omissions are committed knowingly.⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁵

10. The Commission’s antenna structure construction, marking and lighting requirements operate in concert with FAA regulations to ensure that antenna structures do not present hazards to air navigation. Generally, Sections 17.21 and 17.23 of the Rules require owners of antenna structures located close to airports or that are greater than 200 feet in height to comply with prescribed painting and lighting specifications designed to ensure air safety. Because of the substantial public safety issues involved, Section 17.47 of the Rules further requires antenna structure owners to monitor lights daily or install automatic alarm systems to ensure lights function properly. Antenna structure owners are required to maintain lighting equipment and replace or repair inoperative lights, indicators and control and alarm systems as soon as practicable. Additionally, Section 17.48(a) requires antenna structure owners to immediately notify the FAA of any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes. The FAA then issues a Notice to Airmen (“NOTAM”) for a period of 15 days advising aircraft that there is an antenna structure at a specific location with a temporary light outage. Section 17.56 required the replacement or repair of lights to be accomplished as soon as practicable. Section 17.57 further requires antenna structure owners to immediately notify the Commission using FCC Form 854 upon any change in ownership information to facilitate contact if problems arise.

11. El Dorado failed to detect a total light outage on a 75-meter tower near an airstrip for 77 days. El Dorado’s failure to update the ASR ownership report complicated efforts to notify it of the serious potential hazard to air navigation posed by the dark tower. Once notified of the light outage, El Dorado took another month to repair or replace the extinguished lights. Based on the evidence before us, we find that El Dorado willfully and repeatedly violated Sections 17.23 and 17.56 by failing to maintain proper lighting on ASR 1041257 and failing to repair or replace the lights for over three months. We further find that El Dorado willfully violated Sections 17.47(a), 17.48(a) and 17.57 of the Rules by not making an observation of the antenna structures’ lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights; by failing to report the flashing obstruction lighting outage to the FAA, and by failing to update the antenna tower registration to reflect the change in ownership.

12. The base forfeiture amount set by *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”) and Section 1.80 of the Rules⁶, for failure to comply with prescribed lighting and/or marking is \$10,000, for failure to conduct required monitoring is \$2,000, and for failure to file required forms is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in

⁴ Section 312(f)(1) of the Act, 47 U.S.C § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provisions of this Act...” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2) of the Act, 47 U.S.C § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

Section 503(b)(2)(D) of the Act, which includes the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. The automated log reflects that the N#1 tower lights for Antenna Structure Registration # 1041257 were out continuously beginning on December 28, 2001, and remaining out for each consecutive day through March 14, 2002. The lights remained out through April 11, 2002, when finally repaired. Further, an El Dorado employee periodically picked up the automated log report at the transmitter site but failed to take any corrective action in order to bring the antenna tower into compliance with the prescribed lighting or to notify the FAA. These rule violations are grave and posed a potential danger to air traffic safety. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, an \$15,000 forfeiture is warranted.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, El Dorado 900, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for violations of Sections 17.21, 17.23, 17.47(a), 17.48(a), 17.56 and 17.57 of the Rules.⁷

14. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, El Dorado 900, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232900004 and FRN # 0006-7923-03.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200232900004.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables

⁷ 47 U.S.C. § 503(b); 47 C.F.R §§ 0.111, 0.311, 1.80, 17.21, 17.23, 17.47, 17.48(a), 17.56 and 17.57.

Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

19. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 2510 0001 9914 6132, Return Receipt Requested, to El Dorado 900, LLC at 1980 Post Oak Boulevard, Suite 1500, Houston, TX. 77056.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director, Los Angeles Office

⁸ See 47 C.F.R. C.F.R. § 1.1914.